

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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FIVE STAR BANK,

*Plaintiff,*

CASE NO. 6:24-CV-06153-FPG

v.

KATHERINE MOTT; ROBERT HARRIS; KRM  
EVENTS, LLC; KATHERINE'S ON MONROE, LLC;  
THE DIVINITY ESTATE AND CHAPEL, LLC; KNC  
ELEGANCE, LLC D/B/A THE WINTERGARDEN BY  
MONROES; 11 WEXFORD GLEN, LLC; RCC  
MONROES LLC; NAF REMODELING LLC;  
MONROES AT RIDGEMONT LLC CRESCENT  
BEACH AT THE LAKE LLC; MOTT  
MANAGEMENT LLC; KRISTINE BOURNE;  
TAYLOR PAGANO; TIMOTHY LAROCCA

**DECLARATION OF JOHN G.  
HORN IN SUPPORT OF  
SECOND APPLICATION OF  
HARTER SECREST & EMERY  
LLP, COUNSEL TO THE  
RECEIVER, FOR  
ALLOWANCE OF  
COMPENSATION**

*Defendants.*

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JOHN G. HORN, ESQ. declares the following under penalty of perjury:

1. I am a partner of the law firm Harter Secrest & Emery LLP ("HSE"), which pursuant to docket order (ECF Dkt. No. 57), entered by this Court on May 16, 2024 (the "Counsel Appointment Order"), has been retained by Mark R. Kercher, CPA, the receiver (the "Receiver") for the Defendant Entities in the above-captioned matter, as counsel to the Receiver.

2. HSE moves the Court (the "Motion") pursuant to the Counsel Appointment Order for authorization of payment for HSE's services rendered during the period June 1, 2024 through June 30, 2024 (the "Compensation Period"). I make this declaration in support of the Motion.

3. During the Compensation Period, HSE billed 32.9 hours for services rendered to the Receiver. A detailed description of the services rendered to the Receiver by HSE is set forth below. HSE's detailed time records for the Compensation Period are attached hereto as **Exhibit "A"**.

4. The Initial Receiver's Report. During the Compensation Period, the Receiver's initial monthly report to the Court was finalized and filed. Because of the importance of this initial

report of the Receiver (which was the subject of at least one *Buffalo News* article after it was filed) as to his experiences and assessments from the commencement of the receivership, and given the very public dispute which resulted in this lawsuit, the Receiver and HSE understood that the initial report to the Court needed to be straightforward, candid, unbiased, and professional. HSE carefully reviewed and provided feedback on the draft, as well as on the Receiver's proposed financial disclosure, and held several conferences with the Receiver in order to finalize the report. Both the Receiver and HSE suggested multiple revisions to the draft based on these conferences. Once the report was finalized, HSE filed it.

5. Advising the Receiver. During the Compensation Period, HSE advised and assisted the Receiver in additional matters relating to the receivership and the efforts of the Receiver to stabilize the financial condition of the Defendant Entities. These included:

- Conferring with the Receiver as to the proposed sale of real estate to raise working capital for the Defendant Entities and to pay sales tax and withholding arrearages;
- Conferring with the Receiver regarding an action proposed by counsel to the Defendant Entities to recover amounts which were delivered by Community Bank to Five Star Bank from accounts maintained by the Defendant Entities at Community Bank prior to the establishment of the receivership, and subsequently corresponding and conferring with counsel for the Defendant Entities regarding same;
- Conferring with the Receiver regarding dispute between Genesee Construction Services and the Defendant Entities and corresponding with counsel for Genesee Construction Services regarding same;
- Conferring with the Receiver regarding the *Buffalo News* article reporting on the Receiver's initial monthly report and considerations regarding same;

- Reviewing motions to dismiss filings in the instant lawsuit as well as the letter motion of Ridgemont Country Club, one of the landlords of the Defendant Entities businesses, and the order denying same.

6. Fee Applications. During the Compensation Period, on behalf of the Receiver, HSE prepared a second application for compensation for the Receiver and his assistant for accounting matters, Amy Snowberger, for May 2024. HSE also prepared its first application for compensation for the same period.

8. As our Application demonstrates, the services that HSE has rendered on behalf of the Receiver have been beneficial to the Receiver and the receivership.

9. HSE, in the ordinary course of its business, maintains computerized time and financial records. Attached to this Application as **Exhibit “A”** are the detailed time records of the actual services performed on behalf of the Receiver during the Compensation Period. The following is a list of the HSE professionals who performed services for the Receiver in this case during the Compensation Period, together with the billing rates negotiated by the Receiver for each professional:

<u>Partner/Associate</u>	<u>Position</u>	<u>Rate</u>	<u>Hours</u>	<u>Total</u>
Gatto, Nicholas	Senior Counsel	\$400.00	17.50	\$7,000.00
Horn, John	Partner	\$475.00	10.00	\$4,750.00
	<b>TOTAL</b>		<b>27.50</b>	<b>\$11,750.00</b>

<u>Paraprofessional</u>	<u>Position</u>	<u>Rate</u>	<u>Hours</u>	<u>Total</u>
Amplement, Tracy L	Paralegal	\$225.00	5.40	\$1,215.00
		<b>TOTAL</b>	<b>5.40</b>	<b>\$1,215.00</b>

**PROFESSIONALS TOTAL****\$12,965.00**

10. Based upon the foregoing, HSE requests approval for compensation of **\$12,965.00** for actual, reasonable, and necessary services rendered by HSE to the Receiver under and pursuant to the Counsel Appointment Order during the Compensation Period.

**WHEREFORE**, pursuant to the Counsel Appointment Order, for the period June 1, 2024 through June 30, 2024, HSE respectfully requests payment of compensation in the amount of **\$12,965.00** on account of actual, reasonable, and necessary services rendered by HSE as counsel to the Receiver .

Dated: August 7, 2024

HARTER SECREST & EMERY LLP




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*Counsel to Mark R. Kercher, Receiver*